

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TANH HUU LAM,

Defendant.

NO. CR. 97-54 WBS
No. 09-16980 (CTA9)

ORDER DENYING CERTIFICATE OF
APPEALABILITY

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On August 20, 2009, this court denied defendant's motion to invalidate his guilty plea in this action. Defendant filed notice of appeal from that Order on August 31, 2009. The matter was remanded to this court on February 1, 2010, for the limited purpose of granting or denying a certificate of appealability, pursuant to 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).


The court denies a certificate of appealability for the following reasons. Defendant's conviction was affirmed in United States v. Lam, 251 F.3d 852 (9th Cir. 2001), cert. denied, 534 U.S. 1013 (2001). Defendant's subsequent habeas corpus petition pursuant

1 28 U.S.C. § 2255 was denied, and that decision was affirmed in United
2 States v. Lam, 84 Fed. App'x 892 (9th Cir. 2003). After additional
3 motions to vacate his guilty plea pursuant to Rule 11(e) of the
4 Federal Rules of Criminal Procedure and Rule 60(b) of the Federal
5 Rules of Civil Procedure were denied, defendant filed another petition
6 for relief under § 2255 on November 28, 2005. This court denied
7 defendant's motion as a successive § 2255 proceeding. Considering
8 defendant's Rule 60(b) motion on its merits, the Court of Appeals
9 affirmed in United States v. Lam, 228 Fed. App'x 739 (9th Cir. 2007).

10 The present motion is in reality yet another successive §
11 2255 petition. Under 28 U.S.C. § 2255(h), "a second or successive
12 habeas petition must be certified as provided in section 2244 by
13 a panel of the appropriate court of appeals" A defendant
14 may not "circumvent the requirements of AEDPA by simply styling
15 the petition" as a motion to invalidate his guilty plea. United
16 States v. Monreal, 301 F.3d 1127, 1133 (9th Cir. 2002); see
17 United States v. Chilcote, 232 Fed. App'x 708, 709 (9th Cir.
18 2007).

19 For the reasons more fully set forth in this court's
20 Order of August 20, 2009, because defendant's most recent
21 petition was not certified by the Court of Appeals pursuant to 28
22 U.S.C. § 2244, this court was without jurisdiction to afford him
23 the relief requested. A Certificate of Appealability is
24 therefore DENIED.

25 DATED: February 1, 2010

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27 WILLIAM B. SHUBB
28 UNITED STATES DISTRICT JUDGE